

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

DELPHI CORPORATION, et al.,

Debtors.

Chapter 11

Case No. 05-44481 (RDD)  
(Jointly Administered)

**JOINDER OF OSRAM OPTO SEMICONDUCTORS INC. IN LIMITED OBJECTIONS TO  
DIP FINANCING MOTION AND INTERIM DIP FINANCING ORDER, AND  
REQUEST FOR ADEQUATE PROTECTION FOR PRE-PETITION SETOFF RIGHTS  
AS WELL AS PRESERVATION OF RECLAMATION RIGHTS**

OSRAM Opto Semiconductors Inc. (“OSRAM”) hereby joins in the limited objections filed with respect to the Debtors’ Motion<sup>1</sup> for Financing, dated October 8, 2005 (Dkt. No. 42), and the Interim Order Under 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and Fed. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors to Obtain Postpetition Financing, (II) to Utilize Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Parties and (IV) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c), dated October 12, 2005 (Dkt. No. 164) (the “Interim DIP Financing Order”), and request adequate protection for its pre-petition setoff rights as well as preservation of its reclamation rights.

OSRAM supports the Debtors’ request for the Financing and does not oppose the entry of the Final Order, but OSRAM files this limited objection to the Motion and the Interim DIP Financing Order to request that the Court modify the Final Order to expressly provide that the relief granted therein, and pursuant to the Motion and the Financing, does not impair or subordinate OSRAM’s setoff or reclamation rights.

**PRESERVATION OF SETOFF RIGHTS**

1. OSRAM is a supplier to one or more of the Debtors. In the ordinary course of Business, one or more of the Debtors are indebted to OSRAM for goods manufactured and sold

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<sup>1</sup> All capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the Interim DIP Financing Motion (as defined below).

by OSRAM to one or more of the Debtors, and OSRAM may be indebted to one or more of the Debtors for various credits, overpayments, or other sums, in certain amounts, some of which are yet to be determined.<sup>2</sup> As such, because these claims may arise pre-petition and satisfy the mutuality requirement, OSRAM may have a valid right of setoff with respect to such claims involving one or more of the Debtors.

2. OSRAM joins in the various limited objections filed (collectively, the “Limited Objections”) with respect to the request that the right of setoff be preserved for all suppliers to the Debtors. OSRAM’s right of setoff should be adequately protected in the form of priority over the liens and claims to be granted to the Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Secured Lenders pursuant to the Motion and the Financing. OSRAM objects to the relief requested in the Motion to the extent that its right of setoff is modified or eliminated in any respect.

#### **PRESERVATION OF RECLAMATION RIGHTS**

3. On October 11, 2005, a demand for the reclamation of goods were received by one or more of the Debtors from OSRAM with respect to goods received by one or more of the Debtors within the ten-day period prior to the Petition Date (collectively, the “Reclamation Claim”). The Reclamation Claim was asserted pursuant to OSRAM’s rights under section 546(c) of the Bankruptcy Code, Section 2-702 of the Uniform Commercial Code and applicable state law, and covers approximately \$124,000 of goods received by one or more of the Debtors.

4. To the extent the relief sought in the Motion modifies or eliminates the Reclamation Claim, OSRAM requests that the Final Order specifically provide that the relief granted therein, and pursuant to the Motion and the Financing, does not effect in any way any valid reclamation claim of OSRAM that existed as of the Petition Date or otherwise.

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<sup>2</sup> In addition to its pre-petition setoff claims, OSRAM may have post-petition setoff claims that arise against one or more of the Debtors in the ordinary course of business.

WHEREFORE, for the reasons set forth herein, OSRAM respectfully requests that this Court grant the Motion, but modify the Final Order to expressly provide that the relief granted therein does not impact or subordinate OSRAM's setoff right or Reclamation Claim, by adding the following language to the Final Order.

*Setoff Right and Reclamation Claims of Pre-Petition Suppliers.*  
Notwithstanding anything set forth in this Order the relief granted does not (i) impair or effect the setoff rights of the Debtors' prepetition suppliers, or (ii) impair or effect the valid reclamation claims of reclamation claimants.

The Court should grant such other and further relief as it deems just and proper.

Dated: October 24, 2005

COOLEY GODWARD LLP

/s/ Robert L. Eisenbach III  
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Attorneys for Creditor  
OSRAM Opto Semiconductors Inc.

**CERTIFICATE OF SERVICE**

I, Kris Tsao Cachia, hereby declare:

I am employed in the City of San Francisco, County of San Francisco, California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Cooley Godward LLP, 101 California Street, 5<sup>th</sup> Floor, San Francisco, California 94111-5800.

On October 24, 2005, I served the foregoing document(s) described as:

**JOINDER OF OSRAM OPTO SEMICONDUCTORS INC. IN LIMITED OBJECTIONS TO  
DIP FINANCING MOTION AND INTERIM DIP FINANCING ORDER, AND  
REQUEST FOR ADEQUATE PROTECTION FOR PRE-PETITION SETOFF RIGHTS  
AS WELL AS PRESERVATION OF RECLAMATION RIGHTS**

on the interested parties in this action by placing a true copy(ies) thereof, on the above date, enclosed in sealed envelopes for service and prepared for processing as described below, and addressed and served in the manner indicated below:

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XX (BY FIRST CLASS MAIL) I am personally and readily familiar with the business practice of Cooley Godward LLP for collection and processing of correspondence for mailing with the United States Postal Service, pursuant to which mail placed for collection at designated stations in the ordinary course of business is deposited the same day, proper postage prepaid, with the United States Postal Service.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2005 at San Francisco, California.

/s/ Kris Tsao Cachia  
Kris Tsao Cachia